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SENATE BILL 930

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

John T. L. Grubestic

AN ACT

RELATING TO THE SOLICITATION OF SERVICES OR PRODUCTS;  
PROHIBITING SOLICITORS FROM USING CERTAIN LOAN INFORMATION OR A  
TRADE NAME OR TRADEMARK OF A LENDER OR A TRADE NAME OR  
TRADEMARK CONFUSINGLY SIMILAR TO THAT OF A LENDER; PROVIDING A  
CAUSE OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SOLICITATIONS USING LOAN INFORMATION--  
RESTRICTION--CAUSE OF ACTION.--

A. A person shall not reference the trade name or  
trademark of a lender or a trade name or trademark confusingly  
similar to that of a lender in a solicitation offering services  
or products without the consent of the lender, unless the  
solicitation clearly and conspicuously states the following in  
close proximity to and in the same or larger point type as the

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1 first and the most prominent use of a lender's trade name or  
2 trademark:

3 (1) the name, address and telephone number of  
4 the person making the solicitation;

5 (2) that the person making the solicitation is  
6 not affiliated with the lender;

7 (3) that the solicitation is not authorized or  
8 sponsored by the lender; and

9 (4) that the loan information referenced was  
10 not provided by the lender.

11 B. A person shall not reference a loan number, loan  
12 amount or other specific loan information that is not publicly  
13 available in a solicitation offering services or products,  
14 unless the information is included in a communication from a  
15 lender or an affiliate of a lender to a current customer of the  
16 lender or a person who was a customer of the lender during the  
17 eighteen months immediately preceding the solicitation.

18 C. Except as provided in Subsection D of this  
19 section, a person shall not reference a loan number, loan  
20 amount or other specific loan information that is publicly  
21 available in a solicitation offering services or products,  
22 unless the solicitation clearly and conspicuously states the  
23 following in close proximity to and in the same or larger point  
24 type as the first and the most prominent use of the loan  
25 number, loan amount or other specific loan information:

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1 (1) the name, address and telephone number of  
2 the person making the solicitation;

3 (2) that the person making the solicitation is  
4 not affiliated with the lender;

5 (3) that the solicitation is not authorized or  
6 sponsored by the lender; and

7 (4) that the loan information referenced was  
8 not provided by the lender.

9 D. Subsection C of this section does not apply to a  
10 communication by a lender or an affiliate of a lender with a  
11 current customer of the lender or with a person who was a  
12 customer of the lender during the eighteen months immediately  
13 preceding the communication.

14 E. A person shall not use the name of a lender or a  
15 name similar to that of a lender in a solicitation directed to  
16 consumers if that use could cause a reasonable person to be  
17 confused, mistaken or deceived as to:

18 (1) the lender's sponsorship, affiliation,  
19 connection or association with the person using the name; or

20 (2) the lender's approval or endorsement of  
21 the person using the name or the person's services or products.

22 F. Any reference to an outstanding loan, including  
23 the name of the lender, the loan number, the loan amount or  
24 other specific information about the loan that appears on the  
25 outside of an envelope, that is visible through the envelope

1 window or that appears on a postcard in connection with any  
2 written communication that includes or contains a solicitation  
3 for goods or services, is prohibited without the consent of the  
4 lender.

5 G. The prohibitions of this section do not apply to  
6 the use by a person of the trade name of another lender in an  
7 advertisement for services or products that compares the  
8 services or products offered by the other lender.

9 H. A lender or owner of a trade name or trademark  
10 may seek an injunction in a state district court against a  
11 person who violates this section to stop the unlawful use of  
12 the trade name, trademark or loan information. In such an  
13 action:

14 (1) the person seeking the injunction shall  
15 not have to prove actual damage as a result of the violation;  
16 and

17 (2) irreparable harm and interim harm to the  
18 lender or owner shall be presumed.

19 I. A lender or owner seeking an injunction under  
20 Subsection H of this section may, in the same action, seek to  
21 recover actual damages and any profits the defendant has  
22 accrued as a result of a violation of this section. The  
23 prevailing party in an action brought pursuant to this section  
24 may recover costs associated with the action and reasonable  
25 attorney fees from the other party.

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J. As used in this section:

(1) "affiliate" means a business entity that, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity; and

(2) "lender" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union, a mortgage loan company, an escrow company or any other person who makes loans in this state or a holder of a loan and any affiliate, or any third party operating with the consent of the lender.